

APPLICANTS:
Madonna Enterprises, LLC and
Harford County Government

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

REQUEST: An interpretation to correct
a mapping error by adjusting the B3 District
boundary

HEARING DATE: October 17, 2005

Case No. 5513

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Madonna Enterprises, LLC

CO-APPLICANT: Harford County Government

LOCATION: 4106 Norrisville Road, White Hall
Tax Map: 23 / Grid: 4D / Parcel: 17
Fourth (4th) Election District

ZONING: B3 / General Business District and AG / Agricultural

REQUEST: An interpretation pursuant to Section 267-10D of the Harford County Code, to correct a mapping error in the 1997 Comprehensive Rezoning by adjusting the B3 boundary to include Parcel 17 in its entirety, shown on the current maps as B3/AG District

TESTIMONY AND EVIDENCE OF RECORD:

Anthony McClune, Acting Director of the Harford County Department of Planning and Zoning, testified that this request was brought pursuant to Section 267-10D of the Harford County Zoning Code in order to correct a zoning mapping error.

Mr. McClune stated that the subject property is, in its entirety, known as Parcel 17, Tax Map 23. The parcel is located at the southwesterly corner of the Jarrettsville Pike (MD Route 146) and MD Route 23 intersection. A small slice of the parcel has frontage on MD Route 146. The overall parcel is 1.6 acres in size, and is improved by a brick and frame structure which is used for the commercial repair of vehicles.

Mr. McClune explained (and referred to Attachment 8 to the Staff Report in doing so), the parcel is currently split zoned between B3 (General Business District) and AG (Agricultural). Only the most southerly portion of the property, being a small sliver which fronts on Jarrettsville Pike, is zoned AG. Mr. McClune explained that during the 1981 Comprehensive Rezoning a request was made for the entire parcel to be re-zoned to B3.

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Attachment 10 to the Staff Report, according to Mr. McClune, evidences this request, and also indicates the County Council's approval of "1.6 acres changed". Attachment 11 to the Staff Report was identified by Mr. McClune of a copy of the map generated as a result of the 1982 Comprehensive Rezoning. Attachment 8 shows that the entire parcel was designated "B3" on that map.

During the 1989 Comprehensive Rezoning a review of the property was not requested. The subject property accordingly retained its B3 / General Business District zoning. (See Attachment 12 to the Staff Report.)

No issue was raised concerning the subject property during the 1997 Comprehensive Rezoning. However, the zoning map issued in 1997, subsequent to the County-wide rezoning, clearly shows the subject property as having split zoning both B3 and AG. The dimensions of the B3 are clearly changed from that as shown on the 1992 zoning maps. Mr. McClune explained that the 1997 map was drawn in error as no request was made for a change. He attributes this mistake to a drafting error.

The Staff Report states:

"Based on the evidence, it is clear that an unintentional error occurred during the drafting of the 1997 zoning map. To correct this error, approval through the Board of Appeals, pursuant to Section 267-10D of the Harford County Code, is required."

There was no testimony or evidence given in opposition.

APPLICABLE LAW:

Section 267-10D of the Harford County Code grants to the Board of Appeals the power to render interpretations concerning:

"D. Map errors: permitting adjustment of any boundary line to conform to the intent of the comprehensive rezoning and that said adjustment is necessary to rectify a map-drafting error which occurred during the comprehensive rezoning process."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Section 267-10D of the Harford County Code grants the Board of Appeals to adjust a boundary line of a parcel to conform to the "intent" of the comprehensive rezoning. That section requires a finding be made that adjustment is necessary to rectify a map drafting error which occurred during the comprehensive rezoning process.

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The uncontradicted testimony of the Acting Director of the Harford County Department of Planning and Zoning is that a map drafting error occurred during or subsequent to the 1997 comprehensive rezoning process. The entire 1.6 acre subject parcel had been granted B3 zoning in 1982, at the request of the then owner. No issue was raised concerning the property during the 1989 rezoning and the property, as shown by the zoning maps generated as a result of that 1989 comprehensive rezoning review, indicated that the property, in its totality, retained its B3 zoning. As the result of an apparent error in the drafting department of the Harford County Department of Planning and Zoning, the maps drawn as a result of the 1997 comprehensive rezoning review incorrectly show the property as split zoned B3 and AG. It appears, although one cannot say with any certainty, that the drafting error may have been caused by the very small sliver which accesses Jarrettsville Pike as being somehow considered to be AG, as is the larger parcel immediately below it. The line was accordingly drawn to the north side of the sliver, when it should have been drawn to the south side of the sliver.

In any event, testimony is clear that the zoning maps were incorrectly drawn in 1997 to show the property as being split-zoned. The zoning of the subject property is actually B3 in its totality, and it is so found.

CONCLUSION:

It is accordingly found that an error occurred in drafting the 1997 Comprehensive Rezoning maps to show the subject property, being Parcel 17, Tax Map 23, as split-zoned between B3 and AG. In fact, Parcel 17, Tax Map 23, was in 1982 granted a B3 designation. This designation has remained unchanged to the present time and it is, accordingly, ordered that the Zoning Map 23 be changed to correct this drafting error and to show Parcel 17, Tax Map 23 as B3 in its entirety.

Date: November 9, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 12, 2005.